

1 Andrew Goodman, Esq. (State Bar No. 115685)
2 **GOODMAN LAW OFFICES**
3 **A PROFESSIONAL CORPORATION**
30700 Russell Ranch Road, Suite 250
3 Westlake Village, California 91362
4 PHONE: (818) 802-5044;
4 FACSIMILE: (818) 975-5256
5 E-Mail: agoodman@andyglaw.com

6 Attorneys for ADP TotalSource, Inc.
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re
NEXTSPORT, INC.,

Case No. 22-40569 WJL

Chapter 11

**NOTICE OF MOTION FOR APPROVAL
OF STIPULATION BETWEEN THE
DEBTOR AND ADP TOTALSOURCE,
INC. MODIFYING AUTOMATIC STAY
AND OPPORTUNITY FOR
OBJECTIONS**

TO: ALL CREDITORS AND PARTIES IN INTEREST:

PLEASE TAKE NOTICE that debtor and debtor-in-possession NEXTSPORT, INC. ("Debtor"), has entered into a stipulation with ADP TotalSource, Inc. ("Total Source") Modifying Automatic Stay.

I. FACTUAL BACKGROUND

1. The Debtor and TotalSource are parties to that certain Client Services Agreement dated August 21, 2019 (the "CSA"), pursuant to which TotalSource provides to the Debtor human resource services under an arrangement whereby the parties act as co-employers of the employees providing services to the Debtor, referred to in the CSA as the Worksite Employees (the "Worksite Employees").

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1 2. Pursuant to the CSA, Debtor is required to fund the gross payroll for the Worksite
2 Employees and TotalSource, in turn, issues the payroll to the Worksite Employees.

3 3. Pursuant to the CSA, the Debtor is also required to pay workers compensation
4 administration fees and health insurance premiums to TotalSource, which in turn provides those
5 offerings to the Debtor.

6 4. The failure of the Debtor to comply timely with the terms of the CSA puts
7 TotalSource at risk in its role as co-employer of the Worksite Employees.

8 5. In order to protect TotalSource against potential exposure should the Debtor fail to
9 comply with the terms of the CSA, Part 2, Section 13A of the CSA allows TotalSource to terminate
10 the CSA “immediately and without prior notice to [the Debtor]” in the event of “[the Debtor’s]
11 non-payment of any amount due to TotalSource,” among other things.”

12 6. Part 2, Section 13A of the CSA further provides that either party may terminate the
13 agreement for any reason upon 30 days’ prior written notice (the “30-Day Notice Provision”).

14 7. On July 13, 2022, the Debtor filed a voluntary petition under Chapter 11 of the
15 Bankruptcy Code and continues to maintain its assets and operate its business as a debtor in
16 possession.

17 8. The Debtor desires to continue engaging TotalSource for the services provided for
18 under the CSA in accordance with the terms of the CSA; and

19 9. On March 30, 2023, the Debtor and TotalSource entered into a Stipulation to
20 Modify the Automatic Stay (“Stipulation”)[Docket No. 190]. A copy of the Stipulation is attached
21 as **Exhibit “A”** to the Declaration of Lucas Ordonez filed in support herewith. Pursuant to the
22 Stipulation, Debtor and TotalSource stipulate as follows:

23 A. In accordance with the terms of the CSA, as modified, no later than 72 hours
24 prior to the Debtor’s regularly scheduled payroll date, the Debtor shall timely pay by Automatic
25 Clearing House debit transfer, wire transfer, or as otherwise approved by TotalSource, the gross
26 payroll and all fees due for that pay period and submit all reports needed to process that payroll.

27 B. In the event the Debtor fails to make any payment when due or fails to
28 submit timely to TotalSource the information needed for TotalSource to process payroll, time

1 being of the essence, TotalSource shall have the right to terminate the CSA immediately and
2 without further court order, pursuant to the terms of the CSA, provided, however that TotalSource
3 shall first provide the Debtor's representative, David Lee, *david@nextsport.com*; and its attorneys
4 Chris D. Kuhner, *c.kuhner@kornfieldlaw.com* and Eric A. Nyberg. *e.nyberg@kornfieldlaw.com*,
5 with at least 48 hours' written notice and an opportunity to cure.

6 C. Notwithstanding anything contained in the CSA, TotalSource shall not seek
7 to exercise its right to terminate the CSA under the 30-Day Notice Provision prior to the earliest
8 to occur of (a) confirmation of a Chapter 11 plan, (b) conversion of this case to Chapter 7, (c)
9 dismissal of this case, (d) the termination of all Worksite Employees, or (e) the passage of one
10 year.

11 D. Except as set forth herein, the CSA shall remain in full force and effect
12 without modification.

13 E. Nothing contained herein shall constitute a waiver of the right of
14 TotalSource to seek to terminate the CSA for a reason other than that set forth in paragraph 2
15 hereof upon motion to this Court, or for the Debtor to oppose any such effort by TotalSource. The
16 legal rights and obligations under the terms of the Stipulation are intended to, and shall, inure to
17 the benefit of, and be binding upon the parties to the Stipulation and their respective legal
18 representatives, successors, and assigns.

19 **BASIS FOR RELIEF REQUESTED**

20 Pursuant to Federal Rules of Bankruptcy Procedure 9019, "the court may approve a
21 compromise or settlement." F.R.B.P. 9019(a). The "may" language of Rule 9019 indicates that
22 the approval or disapproval of a proposed settlement lies within the sound discretion of the
23 Court. A court should approve a compromise or settlement in bankruptcy if the settlement is "fair
24 and equitable." *In re A&C Properties*, 784 F. 2d 1377 (9th Cir. 1986). The Court should consider
25 the following factors in considering whether a proposed settlement is fair and equitable:

26 (a) The probability of success in the litigation;
27 (b) The difficulties, if any, to be encountered in the matter of collections;
28 (c) The complexity of the litigation involved, and the expense, inconvenience and

1 delay necessarily attending it; and

2 (d) The paramount interest of the creditors and a proper difference to their reasonable
3 views and the premises. *In re A&C Properties*, 784 F.2d at 1381; *Woodson v. Fireman's Fund*
4 *Ins. Co. (In re Woodson)*, 839 F. 2d 610, 620 (9th Cir. 1988).

5 Basic to this determination is consideration of the "likely rewards of litigation."

6 *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S.
7 414, 425 (1968).

8 The bankruptcy court is not required to decide the numerous questions of law and facts
9 raised by the litigation. Instead, the bankruptcy court's responsibility is only to "canvas the
10 issues to see whether the settlement falls below the lower point in the range of reasonableness."
11 *Cosoff v. Rodney (In re W.T. Grant Co.)* 699 F.2d 599, 613 (2nd Cir. 1983). The Court should
12 withhold approval only if the settlement falls below the lowest point in the range of
13 reasonableness. *In re Penn. Truck Lines, Inc.*, 150 B.R. 595, 601 (E.D. PA 1992).

14 Here, the proposed settlement set forth in the Stipulation meets the requirements for
15 approval.

16 1. Probability of Success.

17 TotalSource provides human resource services to Debtor under an arrangement whereby
18 the parties act as co-employers of the employees providing services to the Debtor, referred to in
19 the CSA as the Worksite Employees (the "Worksite Employees").

20 Debtor funds the gross payroll and TotalSource issues the payroll to the Worksite
21 Employees. Failure to fund the gross payroll puts TotalSource at risk in its role as co-employer of
22 the Worksite Employees.

23 Pursuant to the Settlement/Stipulation should the Debtor fail to comply with the terms of
24 the CSA, Part 2, Section 13A, TotalSource may terminate the CSA "immediately and without
25 prior notice to [the Debtor] "in the event of [the Debtor's] non-payment of any amount due to
26 Total Source," among other things and finally, Part 2, Section 13A of the CSA provides that
27 either party may terminate the agreement for any reason upon 30 days' prior written notice (the
28 "30-Day Notice Provision"). Otherwise, the CSA shall remain in full force and effect without

modification. If there was a breach, the strong likelihood is that TotalSource would be able to obtain relief from the automatic stay, which would damage Debtor and its employees.

2. Difficulties of Collection.

This factor is not implicated in this analysis.

3. Complexity and Expense of Litigation.

6 As set forth above, the CSA allows Debtor to fund payroll for the Worksite Employees
7 and for TotalSource to pay the Worksite Employees, thus preventing interruption of Debtor's
8 business operations. To contest TotalSource's rights, the Debtor would be required to file an
9 adversary proceeding, engage in discovery and ultimately participate in a trial on the merits. The
10 cost to the estate would be significant and would delay this bankruptcy case significantly.

4. Paramount Interest of the Creditors.

12 The Stipulation resolves a critical issue in this case and allows the Debtor to continue to
13 operate and have its employees paid.

CONCLUSION

15 **WHEREFORE**, the Total Source and the Debtor request the Court grant the relief
16 requested herein and the Stipulation be approved.

17 PLEASE TAKE NOTICE THAT PURSUANT TO LOCAL RULE 9014-1 (b)(3)(B)

18 UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF

19 CALIFORNIA, ANY OBJECTION TO THE REQUESTED RELIEF, OR A REQUEST

20 FOR HEARING ON THE MATTER, MUST BE FILED AND SERVED UPON THE

21 | INITIATING PARTY WITHIN 21 DAYS OF MAILING THE NOTICE:

PLEASE TAKE FURTHER NOTICE THAT IF THERE IS NO TIMELY

23 OBJECTION TO THE REQUESTED RELIEF OR A REQUEST FOR HEARING, THE

COURT MAY ENTER AN ORDER GRANTING THE RELIEF BY DEFAULT.

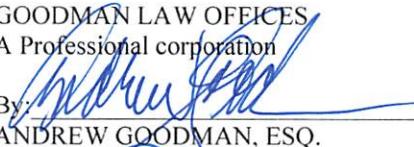
25 PLEASE TAKE FURTHER NOTICE THAT IN THE EVENT OF A TIMELY
26 OBJECTION OR REQUEST FOR HEARING, THE INITIATING PARTY WILL GIVE
27 AT LEAST SEVEN (7) DAYS WRITTEN NOTICE OF THE HEARING TO THE

1 **OBJECTING OR REQUESTING PARTY, AND TO ANY TRUSTEE OR COMMITTEE**
2 **APPOINTED IN THE CASE.**

3 DATED: April 13, 2023

GOODMAN LAW OFFICES

A Professional corporation

By: 
ANDREW GOODMAN, ESQ.

(Bar No. 115685)

Attorneys for ADP TotalSource, Inc.

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DECLARATION OF SERVICE

I am at least 18 years of age and not a party to the within-entitled action. I am employed in the City of Westlake Village in the County of Ventura where the mailing took place. My business address is 30700 Russell Ranch Road, Suite 250, Westlake Village, California. On April 13, 2023, I caused to be served a copy of the following documents:

**NOTICE OF MOTION FOR APPROVAL OF STIPULATION FOR
ALLOWANCE OF SECURED CLAIMS AND ADEQUATE PROTECTION
PAYMENTS AND OPPORTUNITY FOR OBJECTIONS;**

**MOTION FOR APPROVAL OF STIPULATION FOR ALLOWANCE OF
SECURED CLAIMS AND ADEQUATE PROTECTION PAYMENTS; AND**

**DECLARATION OF DAVID LEE IN SUPPORT OF MOTION FOR
APPROVAL OF STIPULATION FOR ALLOWANCE OF SECURED
CLAIMS AND ADEQUATE PROTECTION PAYMENTS**

to the name(s) addressed below:

1 Via-Electronic Service
2 jared.a.day@usdoj.gov
3 Office of the U.S. Trustee Phillip J. Burton
4 Federal Building Attn: Jared Day
5 450 Golden Gate Ave.
6 5th Fl., #05-0153 San Francisco, CA 94102

5 Via-Email
6 Amber Donner, Esq.
7 Spector Rubin, P.A.
8 Continental Plaza
9 3250 Mary Street, Suite 405
10 Miami, Florida 33133
11 Amber.Donner@spectorrubin.com

9 Via-Email
10 OL USA LLC
11 265 Post Avenue
12 Westbury, NY 11590
13 Phone: (516) 654-7226
14 E-mail: angel.espinoza@tts-worldwide.com

13 Via-Email
14 Guangdong Aixi Sports Goods Co., LTD
15 Attn: Cathy Zhu, General Manager
16 No. 113, Da Xin Road, Chang Tang Area,
17 Da Lang Town, Dongguan City, China
18 E-mail: cathy@aixitd.com

17 Via-Email
18 david@davidchapmanlaw.com
19 Barry Gilbert
20 c/o David T. Chapman, Esq.
21 Chapman Law Group, A.P.C.
22 950 Northgate Dr., Suite 306
23 San Rafael, CA 94903

21 Via-Email
22 Kevin M. Capuzzi, Esquire
23 John C. Gentile, Esquire
24 Benesch, Friedlander, Coplan &
25 Aronoff LLP
26 1313 North Market Street, Suite 1201
27 Wilmington, DE 19801
28 kcapuzzi@beneschlaw.com
29 jgentile@beneschlaw.com

21 Via-Email
22 China Export & Credit Insurance
23 Corporation/Sinosure
24 Attn: Brian Mitteldorf, U.S. Agent
25 4340 Fulton Ave., Third Floor
26 Sherman Oaks, CA 91423
27 E-mail: blm@cabcollects.com

21 Via-Email
22 Eric R. Wilson
23 Maeghan J. McLoughlin
24 Eloy A. Peral Kelley, Drye and Warren 3 World
25 Trade Center 175 Greenwich Street New York,
26 NY 10007 Email:
27 kdwbankruptcydepartment@kelleydrye.com;
28 ewilson@kelleydrye.com;
29 mmcloughlin@kelleydrye.com;
30 eperal@kelleydrye.com

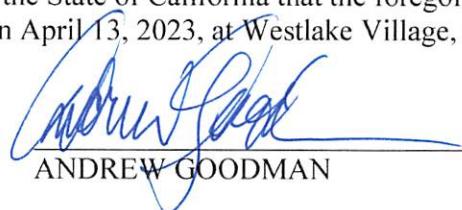
21 Via-Email
22 Conte C. Cicala
23 CLYDE & CO US LLP
24 150 California Street, 15th Floor
25 San Francisco, CA 94111
26 Email: conte.cicala@clydeco.us

21 By enclosing the above documents in an envelope and placing the envelope for collection
22 and mailing on the date and at the place mentioned above following our ordinary business
23 practices. I am readily familiar with this business's practice for collecting and processing
24 correspondence for mailing. On the same day that correspondence is placed for collection and
25 mailing, it is deposited in the ordinary course of business with the United States Postal Service in
26 a sealed envelope with postage fully prepaid. (CCP §§ 1013, 1013(a), 2015.5).

1 X By emailing said document(s) to persons listed below to their email addresses also listed
2 above in Adobe Acrobat, Word or WordPerfect.

3 X By facsimile transmission as agreed by the parties from a facsimile transmission machine,
4 whose telephone number is (818) 975-5256. For the same party at the facsimile number referenced
5 above. The above document(s) were transmitted to a facsimile machine maintained by the person on
6 whom it is served. The transmission was reported as complete and without error and the transmission
7 report was properly issued by the sending fax machine. A copy of the transmission report is hereby
8 attached. (CRC §2.306, CCP §§1013(e), 2015.5).

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
10 and correct and that this declaration was executed on April 13, 2023, at Westlake Village, California.



11 ANDREW GOODMAN

Andrew Goodman

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Unsecured Vendor Name	Vendor Contact	Email
Acorn	Scott Stillinger	scott@stillinger.com
American Express	William Becket	wbecket@becket-lee.com
American Label Technologies		Josh@americanlabeltech.com
Bazaarvoice, Inc.	Emmanuel Gabler	emmanuel.gabler@bazaarvoice.com
Capital Premium Financing		info@capitalpremium.net
Deborah Rader		dnrader@theradercompany.com
Dekra Testing and Certification	Bo Hu	bo.hu@dekra.com
Dept of Finance Quebec		ministre@finances.gouv.qc.ca
Dongguan Aixi Sports Goods Co.,Ltd.	Cathy Chu	cathy@aixiltd.com
State of California Income Tax	Bkctey Unit	(F) 916-845-9799
JAS Forwarding Netherlands	Rene Kruse	rene.kruse@jas.com
JAS Forwarding UK	Caroline Deol	caroline.deol@jas.com
Mode Transportation	Cassandra Webb	cassandra.webb@modetransportation.com
		ptiger.sfo@oecgroup.com;
OEC Group	Paul Tiger	mgholamnejad.lax@oecgroup.co
OL USA LLC	Jason Tayler	tayler.jason@ol-usa.com
Qirui Sports (Hangzhou) Co., Ltd.	Fred Yang	qiruisport@163.com
Sinosure		webmaster@sinosure.com.cn
Team Direct Management	Brad Rampy	brad@teamdirectmgmt.com
The Stable	Dean Koutroupas	dkoutroupas@thestable.com
		davidma@tsfec.com.hk
Tri-State	David Ma	lyndonlee@tsfec.com.hk
JBS Logistics (new owners of LE)	George Hynes	george@logisticedge.com
Logistic Edge, LLC	George Hynes	george@logisticedge.com
LS Logistics	Mark Jackson	mark.jackson@lanesales.com

1	Tigers International Solutions PTY LTD. AU	Tracey Oldis	tracey.oldis@Go2Tigers.com
2			Leyla.Ozkan@go2tigers.com;
3			sabina.mauri@jas.com;
4			Marco.Touw@Jas.com;
5			
6	Tigers International Logistics BV	Leyla Ozkan	Stefan.Ramsaransing@Go2Tigers.com
7	Tigers Global Logistics Limited UK	Jay Permanand	jay.permanand@go2tigers.com
8	Montana (Tiwan) Int'l Co., Ltd.	Iris Su	tmontana@ms11.hinet.net
9	Yonkang Tangsheng Industry Co., Ltd.	Flora Lv	sales1@tangshengscooter.com
10			
11	Yongtai Industry & Trade Co., Ltd.	Alex	ytf_asia@asiayongtai.com
12	Joe Deluca		jdeluca@hciv.com
13	Barry Gilbert		david@davidchapmanlaw.com ; bgilbert7@gmail.com
14	Ed Dua		ed@nextsport.com ;
15			coachrobgold@aol.com
16	Robert Gold		goldstnd@aol.com
17			
18	Ouiby, Inc. dba Kickfurther	David Koifman	david@kickfurther.com ; Jackson@kickfurther.com .
19		Jackson Killion	Amazon-deal@amazon.com ;
20	Amazon Capital Services, Inc.		Brian.Peterson@klgates.com ;
21	Wells Fargo Credit Line	Joseph Wolf	Joseph.Wolf2@wellsfargo.com
22		Loan No. xxxx-	
23	US Small Business Administration	9107	Dante.acosta@sba.gov ;
24			
25			
26			
27			
28			